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J.F.W.

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS

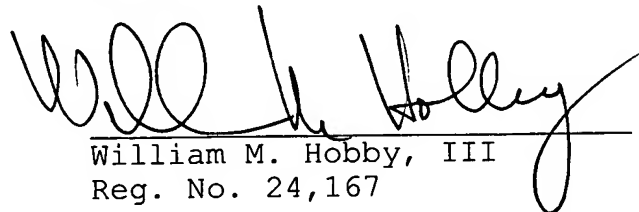
In Re Patent Application of :
CYNTHIA A. RIGGALL :
Serial No.: 10/051,688 : Art Unit 3764
Filed: 01/22/2002 : Examiner Fenn C. Mathew
For: **THERAPEUTIC GLOVE APPARATUS** :

Mail Stop Appeal Briefs-Patent
Commissioner for Patents
Alexandria, VA 22313-1450

SIR:

I am enclosing herewith an original and two copies of the
Brief of Appellants for the subject identified patent applica-
tion. Also enclosed is a check for the brief fee of \$250.00.

Respectfully submitted,



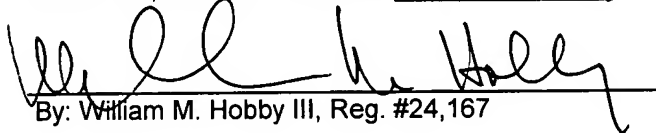
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By: William M. Hobby III, Reg. #24,167



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BRIEF OF APPELLANTS

This is an appeal from the Examiner of Art Unit 3764
refusing claims 1 and 3. The claims on appeal are set forth in
the Appendix.

1. Real Party in Interest

The real party in interest is the Applicant, Cynthia A.
Riggall.

2. Related appeals and interferences

There are no related appeals or interferences.

3. Status of Claims:

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) over the Helenick U.S. Patent No. 6,141,801 in view of Fabry U.S. Patent No. 5,345,609.

4. Status of Amendments

There are no pending amendments. A proposed amendment after final rejection was entered by the Examiner for purposes of this appeal.

5. Summary of the Invention:

A therapeutic glove 10 has a top glove half 11 formed of a flexible material and shaped to cover one side of a person's hand and has a bladder 15 broken into cells and filled with a viscous fluid clay 17. A bottom glove half 12 is formed of a flexible material and shaped to cover the other side of a person's hand and is hingedly attached to the top glove half 11 and also has a bladder 16 having a plurality of cells formed therein filled with a viscous fluid clay 17. Attaching straps 21 have hook and loop material 22 thereon for attaching the first and second glove halves 11,12 for removably attaching the therapeutic glove 10 over a person's hand. The therapeutic

glove allows a person to exercise the muscles of the hands, fingers, and wrists by movement against the resistance of viscous clay 17 while simultaneously applying heat or cold to a person's hand.

6. Issues

The issue presented as to claims 1 and 3 is whether these claims meet the requirement of patentability under 35 U.S.C. 103(a).

7. Grouping of Claims

Claims 1 and 3 form one group of claims for a therapeutic glove finally rejected under 35 U.S.C. 103. The rejected claims, however, do not stand or fall together and the arguments set forth herein present reasons as to why Appellant considers the rejected claims to be separately patentable.

8. Arguments

All of the claims of this case stand finally rejected under 35 U.S.C. 103(a) over the Helenick patent for a thermal glove in view of the Fabry et al patent for a protective glove having protective pockets with shock-absorbing cells.

The Helenick patent is a thermal glove fitted to a human hand and having a pocket in the top thereof for holding a removable thermal, gel-filled pack. The gel pack includes a sealed bladder constructed of a flexible material resistant to heat and rupture. The removable bladder is filled with a thermal gel adapted for heating and cooling which is used for heating and cooling the back of the hand. The gel pack is removably placed within a pocket integrated with the body of the glove which is adapted to removably receive the gel pack to allow the gel pack to be removed for heating or cooling. The glove is a five digit design in which the gel pack is removably attached in a pocket in the backhand side of the glove. The glove may also provide a support cuff extending up the forearm of the wearer for comfort and to prevent injury when used by technical workers, such as computer users and laboratory workers.

In contrast, the present therapeutic glove is for exercising the hand in a particular fashion while simultaneously applying heat or cooling to the entire hand. The glove includes a first glove half formed of a flexible material and shaped to cover one side of a person's hand and has a plurality of cells formed therein filled with viscous clay. The second glove half is formed of a flexible material and is shaped to cover the

other side of a person's hand and is removably attached to the first glove half and also has a plurality of cells formed therein and filled with a viscous clay. Attaching means allow the first glove half and the second glove half to be removably attached to each other over a person's hand. This attachment allows the glove to be easily attached to a person's hand who might otherwise have difficulty inserting the hand into a glove because of arthritis or other disability in movement of the hand and allows heat or cold to be applied to the hand from the viscous clay on both sides of the hand while the hand is being exercised by moving the hand in the viscous clay. Exercising is performed by the kneading of the clay held within the bladders of the glove which covers the entire hand.

The Helenick patent does not provide a therapeutic glove for exercising the hand while heating and cooling the hand and which has a first glove half having a plurality of cells and filled with a viscous clay and does not have a second half also formed and filled with a viscous clay which is hingedly attached to the first half. It does not have an attaching means for attaching the first half to the second half of the glove over a person's hand to provide the viscous clay covering on both sides of the hand to allow not only the therapeutic application of heat to

the hand but simultaneously allow a person to exercise the muscles of the hand, fingers and wrist by the kneading of the viscous clay. Obviousness determination under 35 U.S.C. 103 must include consideration of the invention as whole, including its structure, its properties, and the problem it solves, so that unobviousness of structure for its intended purpose is relevant to obviousness determination In re Wright, 6USPQ2d, 1959, 1988.

The Fabry et al. patent is a protective glove having closed and isolated fluid filled shock absorbing cells. This invention provides a protective glove designed to protect the wearer's hand from blows or impacts against the back of the hand. It does not provide a therapeutic glove for exercising the hand or the use of heated or cooled clay to a person's hand while the hand is being exercised. It also does not have first and second halves of a glove removably attached to each other with attaching means for attaching the first and second halves over the person's hand and it does not suggest the use of a viscous clay. This patent protects against shock and there is no suggestion to use it for therapeutic heating or cooling or a kneading type exercise. It is only fundamental that a valid reference is good for what it discloses and must show all or

part of the invention for which a patent is sought, In re Stempel, Jr., 113 U.S.P.O. 77 (CCPA 1977). These prior references do not show the present invention as claimed.

It would be unobvious to combine the Helenick patent for a glove with a pocket on the back thereof for a removable thermal pack with the Fabry et al. patent for a protective glove having protective pockets with shock-absorbing cells. The Helenick patent is a removable gel pack for placing in a glove which is removed for heating and cooling and then supported on the back hand of the glove, and thus not suitable for exercising the hand, while the Fabry et al. patent is merely a protective glove also placed on the back of the hand as protective cushioning. It clearly does not suggest exercising the hand in a kneading action with clay that is heated or cooled on both sides of the glove and surrounding the hand. The present independent and dependent claim form a patentable combination which would be unobvious to a person of ordinary skill in the art, especially in the absence of a teaching reference. It is well settled that a claimed combination may be patentable whether it is composed of elements all new, partly new or all old. Rosemount, Inc. v. Beckman Instruments, Inc., 727 F.2d 1540, 221 USPO 1, 7 (Fed. Cir. 1984). This is because the prior art must contain

some teaching, suggestion or incentive to combine the individually known elements or features in such a manner as to result in the claimed invention. Carella v. Starlight Archery, 804 F.2d 135, 231 USPQ 644, 647 (Fed.Cir.1986). There is no incentive to combine the Helenick glove with a removable thermal pack with the Fabry et al shock-absorbing glove which still would not teach the present invention.

Applicant believes that the present application as amended patentably distinguishes over the prior references and would be unobvious to a person of ordinary skill in the art in view of the combination of the Helenick and Fabry et al. patents in that these patents do not teach the specific elements of the invention as claimed and in that it would be unobvious to a person of ordinary skill in the art to combine the references except in hindsight of Applicant's disclosure. Even so, the combination would still teach something different from Applicant's invention. The combination would teach a thermal gel placed on the backside of the hand but would not provide therapeutic glove specifically for exercising the muscles of the hand, fingers and wrist while applying heat to the person's hand and especially adapted to fit over an arthritic hand. The prior art does not teach the invention as claimed and there is

no teaching reference or suggestion to combine the references and it would be unobvious to combine the references without Applicant's disclosure. Any combination of the references is no more than a hindsight reconstruction and still would not teach the elements of the claims. The combining of the reference patents would require a total redesign of the prior patents in view of Applicant's disclosure and any attempted piecemeal and hindsight re-construction of the claim is not permissible in rejecting a claim, In re Rothermal, et al 125 U.S.P.O. 328 (CCPA 1960).

Neither the Helenick nor the Fabry et al. patents teach a glove having a first half shaped to cover one side of a person's hand and a second half shaped to cover the other side of a person's hand, which first and second glove halves are hingedly attached to each other on one side and removably attached on the other side as claimed in claim 1.

Neither the Helenick nor the Fabry et al. patents teach the use of a viscous clay material to make a therapeutic glove which is both an exercise glove for exercising the muscles of the hand, fingers and wrist while providing for the application of heat or cold to a person's hand as spelled out in claim 1.

Not one element of claim 1, as amended, is taught by the Fabry et al. or the Helenick patent. Neither the Helenick nor the Fabry et al nor any combination thereof teach the use of two separate flexible gloved halves formed to be placed separately over the top and bottom of a person's hand and then attached together, as required for a person with severe arthritis and for a glove filled with heavy fluid clay.

Claim 3 further teaches the therapeutic glove of claim 1 with the addition of hook and loop fasteners to bind the two glove halves together and binding two glove halves filled with clay together over a person's hand is not taught by the prior art.

The patent examiner bears the burden of establishing a prima facie case of obviousness when rejecting claims under 35 U.S.C. 103. The mere fact that the reference cited by the examiner may be modified does not allow the examiner to meet his or her burden absent a suggestion in the cited art of the desirability of the modification. In re Fritch, 23 U.S.P.Q. 2d 1780 (Fed. Cir. 1992).

An Appendix containing a copy of each of the claims appealed is attached hereto.

Conclusion

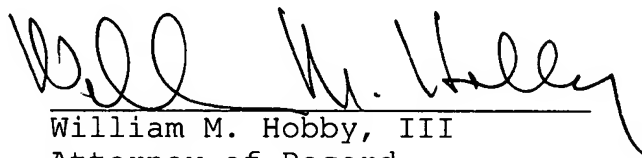
Applicant submits that all of the appealed claims in this application are patentable under 35 U.S.C. 103 and a reversal of the Examiner is believed to be in order.

This Brief and Appendix are enclosed in triplicate.

Fee

This application is on behalf of a small entity and a fee of \$250.00 is enclosed herewith.

Respectfully submitted,



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By: William M. Hobby III, Reg. #24,167



CLAIMS APPENDIX

1. A therapeutic glove comprising:

a first glove half formed of a flexible material and shaped to cover one side of a person's hand, said first glove half having a plurality of cells formed therein filled with viscous clay material;

a second glove half formed of a flexible material and shaped to cover the other side of a person's hand and being movably attached to said first glove half, said second glove half having a plurality of cells formed therein filled with a viscous clay material; and

attaching means attached to said first glove half and to said second glove half for removably attaching said first glove half to said second glove half over a person's hand;

whereby a therapeutic glove allows a person to exercise the muscles of the hand, fingers, and wrist during the application of heat or cold to the person's hand.

3. A therapeutic glove in accordance with claim 1 in which said attaching means includes hook and loop material attached to said first and second glove halves.